

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
Galveston Division

_____	)	
TEXAS DEPARTMENT OF CRIMINAL	)	
JUSTICE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 3:17-cv-00001
	)	
UNITED STATES FOOD AND DRUG	)	
ADMINISTRATION et al.,	)	
	)	
Defendants.	)	
_____	)	

**PLAINTIFF TEXAS DEPARTMENT OF CRIMINAL JUSTICE'S  
MOTION FOR SUMMARY JUDGMENT**

Plaintiff Texas Department of Criminal Justice (“TDCJ”) respectfully moves the Court to enter summary judgment in its favor under Fed. R. Civ. P. 56. TDCJ’s claims in this case challenge an order of the U.S. Food and Drug Administration (“FDA”) that prohibited TDCJ from importing a drug to administer lawful capital sentences through lethal injection. For the reasons set forth in the Memorandum accompanying this Motion (and in future filings and arguments to be presented), the Court should hold that FDA’s order is a final agency action in excess of statutory jurisdiction, authority, or limitations within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706(2)(C). For those same reasons, the Court should enter judgment for TDCJ and against all Defendants on all claims, hold unlawful and set aside FDA’s order, issue the declaratory judgment and injunction requested in the Second Amended Complaint, order FDA to release the disputed drugs to TDCJ, and award such other relief as the Court deems just and proper.

Respectfully submitted,

Edward L. Marshall  
Chief, Criminal Appeals Division  
State Bar No. 00797004  
S.D. Tex. Bar No. 22642  
Matthew Ottoway  
Assistant Attorney General  
State Bar No. 24047707  
S.D. Tex. Bar No. 892308  
Texas Attorney General’s Office  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
(512) 936-2891 (telephone)  
(512) 320-8132 (fax)

/s/ Daniel G. Jarcho  
Daniel G. Jarcho, Attorney in Charge  
Tamara R. Tenney  
ALSTON & BIRD LLP  
950 F Street, N.W.  
Washington, D.C. 20004  
(202) 239-3254 (telephone)  
(202) 239-3333 (fax)

Attorneys for Plaintiff Texas Department of Criminal Justice

**CERTIFICATE OF CONFERENCE**

I hereby certify that I have discussed the foregoing motion with Alexander Sverdlov, counsel for the Federal Defendants, who indicated that the Federal Defendants oppose the relief requested in this motion.

/s/Daniel G. Jarcho  
Daniel G. Jarcho

**CERTIFICATE OF SERVICE**

I hereby certify that on July 31, 2017, I electronically filed the foregoing Motion and supporting Memorandum with the Clerk of Court for the U.S. District Court, Southern District of Texas, using the electronic case-filing system of the Court. The electronic case-filing system sent a “Notice of Electronic Filing” (NEF) to the following counsel of record, who consented in writing to accept the NEF as service of this document by electronic means:

Alexander V. Sverdlov  
Trial Attorney  
Consumer Protection Branch  
Civil Division  
U.S. Department of Justice  
P.O. Box 386  
Ben Franklin Station  
Washington, DC 20044

/s/ Daniel G. Jarcho \_\_\_\_\_  
Daniel G. Jarcho